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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 98-201; RM Nos. 9335 and 9345
Comments of Gilmore Broadcasting Corp.

Dear Ms. Salas:

Enclosed herewith, on behalf of Gilmore Broadcasting Corp, are an original and thirteen (13) copies of the **COMMENTS OF GILMORE BROADCASTING CORP.** in response to the Notice of Proposed Rulemaking, FCC 98-302, in the above referenced proceeding. A copy of the Comments, on diskette, has been sent to Mr. Don Fowler and the International Transcription Service, Inc. as required by the Notice.

Should there be any questions concerning this matter, please contact the undersigned. Thank you for your attention.

Very truly yours,



Oren Rosenthal

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of

**Satellite Delivery of Network Signals
to Unserved Households for Purposes of
the Satellite Home Viewer Act**

**Part 73 Definition and Measurement
of Signals of Grade B Intensity**

**CS Docket No. 98-201
RM No. 9335
RM No. 9345**

COMMENTS OF GILMORE BROADCASTING CORP.

Gilmore Broadcasting Corp. ("Gilmore"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. As licensee of Evansville, Indiana television station WEHT (Channel 25, ABC), Gilmore's principal concern with the rule changes proposed in this proceeding is the impact such changes will have on local broadcasters' ability to reach their local viewing audiences over-the-air with valuable local news and information.

1. Introduction

The 1988 Satellite Home Viewer Act ("SHVA"), 17 U.S.C. § 119 (1998), defines an "unserved" household that is entitled to receive DBS feeds of distant network stations' programming as a household that cannot receive a "Grade B" signal. Under the FCC's current standard, a broadcast station's over-the-air Grade B signal is one that produces an acceptable

picture that can be received by at least 50% of the audience 50% of the time.¹ The Notice proposes to redefine this standard to reflect reception by 50% of the audience more than 90% of the time.² While this proposal is short of Grade A signal strength (reception of an acceptable picture by 70% of the audience 90% of the time) and the even more draconian 99% and 100% reception proposals of EchoStar and the NRTC, redefining a Grade B signal to the new standard would drastically erode local television station audiences as shown in Longley-Rice maps submitted by the National Association of Broadcasters ("NAB") and other commenters in response to petitions that EchoStar and the National Rural Telecommunications Cooperative ("NRTC") filed to seek Commission action of the sort being proposed in this proceeding.³ The overly broad definitions of "unserved household" resulting from the changes to Grade B signal strength, as proposed by the Notice, EchoStar and the NRTC, disregard Congress' intent in adding the "white area" exception to the SHVA. In keeping with fundamental tenets of copyright law (and the SHVA is, after all, part of the Copyright Act), Congress kept the DBS compulsory license narrowly confined. The statutory limitations on the license were lifted to

¹ See 47 C.F.R. § 73.683(a); *CBS, Inc. v. Primetime 24 Joint Venture*, 9 F.Supp. 2d 1333, 1339 (S.D. Fla. 1998) ("[T]he plain language of the [SHVA] adopts the FCC's definition of a grade B signal (an objective test) to determine whether a household is an 'unserved household.'")

² Notice ¶ 32.

³ See EchoStar Petition for Declaratory Ruling and/or Rulemaking of Echostar Communications Corporation at 29; Emergency Petition for Rulemaking of the National Rural Telecommunications Cooperative at iii, 19; See also Notice ¶ 9.

cover only “a small percentage of television households [that] cannot now receive clear signals embodying the programming of the three national television networks.”⁴

2. Local Broadcasters Provide A Unique Service To The Community That Will Be Jeopardized By Any Redefinition Of Served Households.

The Commission itself has expressed concern lest it overstep its boundaries in altering the current Grade B and thereby expand the universe of “unserved” households beyond what Congress intended in the SHVA.⁵ Apart from this potential problem and the equally valid concern that satellite providers that acted in bad faith by transmitting distant network signals to customers in served households will benefit as a result of their illegal activities,⁶ Gilmore opposes the proposed changes because they are likely to place local broadcasters’ ability to serve their local markets in jeopardy.

Like many local network affiliates, WEHT renders a unique service to its local viewing audience by providing a free source of information about local events and topics of vital local interest. In the

⁴ House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added)

⁵ Two separate House Committee Reports pertaining to the 1988 SHVA expressly state that the “white area exception” was enacted “in recognition of the fact that *a small percentage of television households* cannot now receive clear signals embodying the programming of the three national television networks.” House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5611, 5621; *accord* House Energy and Commerce Committee Report, H.R. Rep. No. 100-887, pt. 2, at 19 (1988) (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5638, 5648. Further, the House Energy and Commerce Committee expressly characterized these unserved white areas as “typically rural.” *Id.* Congress repeated this characterization in enacting the Satellite Home Viewer Act of 1994 [the “1994 SHVA”], Pub. L. No. 103-369 § 2, 108 Stat. 3477 (1994). At that time, the Senate Judiciary Committee reported that it “is especially aware of the importance of home satellite viewing to households in *rural areas*.” S. Rep. No. 103-407, at 8 (1994) (emphasis added); Notice ¶ 2.

⁶ *See, e.g.*, “Broadcasters Give DBS a Reprieve,” *The Hollywood Reporter*, August 31, 1998; “Injunction and Summary Judgment Entered Against Primetime 24,” *Satellite Week*, July 20, 1998; Notice ¶ 15.

aftermath of the controversial closure of the National Weather Service installation in Evansville, WEHT has become the principal source of weather information to the area. The station has the highest wattage radar facility in the area, which it uses to provide its Emmy award-winning weather information and emergency bulletins to the local viewing audience. Five live units, a satellite uplink truck, a camera-equipped helicopter and a newsroom staff of 38 enable WEHT to provide much more extensive coverage of local news stories than might be expected in DMA #95. The station's crews are disbursed throughout the service area on a daily basis, covering news stories drawn from all communities within its Grade B contour in 6 a.m., 11:30 a.m., 5 p.m., 6 p.m., 9 p.m., and 10 p.m. daily newscasts. Besides weather emergency and news coverage, WEHT provides in-depth campaign and election reports and offers the only comprehensive coverage of the many regional, state and local races occurring in its tri-state service area.

WEHT's commitment to local programming, which has been recognized by an award from the Indiana State Broadcasters Association, is reflected further in public service programming and coverage of community events. For over 37 years WEHT has joined with a local charity, the Santa Clothes Club, several community service organizations and local businesses in a fundraising effort to provide clothing to needy children throughout the viewing area during the holiday season. WEHT donates air time for an annual telethon that runs from 6 p.m. until the fundraising goal is met, provides production resources and makes its news anchors and on-air personalities available to hosts. With the telethon proceeds, the Club provides certificates which children can use to "shop" at a special clothing store. This year, over 2200 local children will be recipients of clothing. In February of each year, the station promotes the sale of coupon books to raise supplemental funds to support extracurricular and enrichment activities, computer equipment and facilities for local schools. Last year the event raised over \$245,000 to be used

for “extras” that school system budgets could not otherwise support. Each spring WEHT devotes a complete broadcast day to televise an Easter Seals Telethon that last year raised \$565,000 to support a local rehabilitation center for children with life-threatening or disabling diseases and adult stroke victims. Currently, the station is airing a salute to students from 38 high schools in its service area, which features WEHT news anchors interviewing individual high school students about their personal heroes.

In its current incarnation, the SHVA grants DBS providers a copyright license to transmit distant network signals that do not contain these valuable local services. While distant network signals are of course better than no signal at all, local broadcasters like WEHT unquestionably provide the highest value service to households within their markets. Should the Commission accept a more expansive definition of unserved households under the SHVA and allow DBS providers to transmit distant network signals to households that can receive local signals with the proper antenna,⁷ many local viewers will be denied the kinds of local programming and information that WEHT provides. With the loss of audience mass and the corresponding loss of advertising revenues, not only will the households that subscribe to satellite delivery systems be deprived of the local service, but local service for all households in the redefined communities will be reduced. The definition of unserved households therefore should be as narrow as

⁷ The Notice also requests comment on the methodology for measuring signal strength at individual locations. In this regard, Gilmore takes issue with testing procedures proposed by EchoStar and described in the Notice at ¶ 9. Specifically, to assume that most rooftop antennas are not equipped with rotor capability or to assume that viewers are unwilling to or incapable of changing an antenna’s direction seems quite unrealistic. Nor is it reasonable to base the standard on the lowest quality equipment or the most egregious signal attenuation due to use of an excessive number of splitters.

possible, to favor the possible reception of local network signals and programming over a compulsory license for distant network signals where such reception is not strictly needed.

3. Any Proposed Rulemaking Is Unnecessary In Light Of Impending Congressional Action To Impose A More Effective Solution.

As a result of recent technological advances, “local-into-local” distribution of network signals affords a more effective, fairer means of incorporating broadcast network programming into the service packages being received by DBS subscribers. While legislation to provide “local-into-local” service failed to come to a full vote in 1998,⁸ House Commerce Committee Chairman Bliley (R-Va) and Senate Commerce Committee Chairman McCain (R-Ariz.) are committed to reintroducing this legislation in the next session.⁹

However, to DBS providers’ apparent dissatisfaction, these legislative proposals would require satellite providers to carry, upon request, all non-duplicative broadcast signals located within the relevant local market in order to qualify for such a compulsory license. This solution represents the current equilibrium point in a delicate legislative process which must balance the interests of broadcasters, satellite carriers, cable providers, and the public. While it is unclear at the present time exactly where the ultimate balance will be struck, the Commission should

⁸ See H.R. 2921 (1998); S. 2494 (1998).

⁹ See 144 Cong. Rec. E1999 (Sept 10, 1998) (“I [Bliley] just would like to state for the record, my firm commitment to revisiting and resolving these issues in a comprehensive manner early next year...”); *Statement of Senator John McCain Chairman, Senate Committee on Commerce, Science, and Transportation: Full Committee Hearing on S. 2494, The Multichannel Video Competition Act of 1998* (October 1, 1998)

refrain from taking any action at this time that would tend to compromise Congress' ultimate ability to craft a solution.

In Gilmore's view, "local-into-local" would solve the problem of network programming availability and would have the added advantage of making broadcasters' local programming – including local news, public affairs, public service announcements, local emergency warnings and information, and political broadcasts and advertisements, available to DBS subscribers. In addition, "local-into-local" would preserve the economic integrity of the system of broadcasting that has served the country so well for so many years and would create a truly level playing field among DBS, over-the-air broadcasting and terrestrially based multi-channel video distributors such as cable operators and wireless cable systems creating the competitive markets that Congress envisioned in the Telecommunications Act of 1996.

Gilmore strongly supports this legislation to amend the SHVA to provide for "local-into-local" distribution, with appropriate must-carry and retransmission consent rights for local stations. Indeed, it is only fair that in exchange for their valuable copyright license DBS providers should be willing to accept obligations to which their competing distribution media are subject. Rather than advancing the interests of consumers in the long run, precipitous adoption of Grade B signal redefinition proposals could have the unfortunate effect of destroying the momentum building for a legislative effort that promises ultimately to provide a more effective solution.

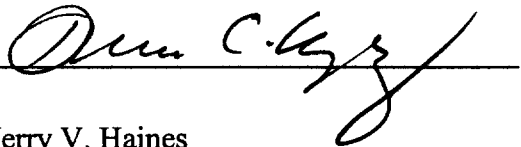
4. Conclusion

For the forgoing reasons, Gilmore urges the Commission to refrain from altering the current Grade B standard and to reject suggested revisions to individual measurement procedures

until Congress has had the opportunity to consider local-into-local legislation. In the alternative, the Commission should craft rules which would provide the greatest possible local service to households and allow distant signal retransmission only where local service truly is unavailable.

Respectfully submitted,

GILMORE BROADCASTING CORP.

By: 

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December 11, 1998

DECLARATION OF DOUGLAS A. PADGETT

I, Douglas A. Padgett, President and Chief Operating Officer of Gilmore Enterprises Corporation, do hereby affirm that I have read the attached comments and verified, to the best of my knowledge, the factual statements contained therein. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of December, 1998.


Douglas A. Padgett